IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8026 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGATSINGH LALSINGH

Versus

COMMANDANT

Appearance:

MR IS SUPEHIA for Petitioner

MR HV CHHATRAPATI for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/01/2001

ORAL JUDGEMENT

#. In this petition, the first prayer of the petitioner is for quashing the order dated 11-11-1990 (Annexure-'A') and directing the recovery of economic rent amounting to Rs.14,806=45 for the period between 5-12-1979 to 1-12-1988, during which period the petitioner was allegedly unauthorizedly occupying the house in Block No.C, Room No.19 of Vadodara Group No.1. The second prayer is that, in case the first prayer is not granted, the respondent be directed to pay the house rent to the petitioner for the period the economic rent is to be

recovered by the respondent.

#. Shri IS Supehia, learned counsel for the petitioner and Ms. Manisha Lavkumar, learned AGP for the respondent have been heard and the annexures have been examined.

#. The factual aspect is not in dispute. The petitioner was working as an Armed Head Constable and was serving in SRP Group No.1, Vadodara under the Commandant. He was allotted Room No.19, Block No.C of Vadodara, Group No.1. He was transferred from Group No.1, Vadodara to Nadiad. However, he did not vacate the room at Vadodara for a period of about nine years. Two notices were given to the petitioner, but he neither vacated the room nor shifted to Nadiad. Consequently, the impugned order was passed.

#. The impugned order (Annexure-'A') has been challenged in the course of argument by Shri Supehia on five grounds. The first contention has been that, the impugned order (Annexure-'A') has been passed without affording any opportunity of hearing to the petitioner and without issuing any show cause notice to the petitioner, why economic rent be not recovered from him. In support of his contention, he has placed reliance on two unreported judgments in SCA No.8631/1990 decided on 25-4-2000 and in SCA No.5111/1996 decided on 3-9-1996. In both the cases, the order for recovery of economic rent in one case and market rent in the other case was set-aside on the ground that no show-cause notice was given to the petitioner before passing the impugned order. However, the right of the respondent for proceeding again in accordance with law was not taken away in those two cases. The order was thus quashed on technical ground and still the respondents were authorized to proceed to recover economic/market rent after proceeding in accordance with law, which means after issuing fresh show-cause notice. However, these two cases can not be applied to the facts of the case before me. Two notices Annexures-'E' and 'F' were given to the petitioner. Annexure-'E' is a notice dated 31-1-1986, in which, the facts were highlighted and it was pointed out that the petitioner has not handed over possession of the said quarter. He was asked to hand over possession within ten days, failing which, action was proposed to be taken against him under the Bombay Police Act. Notably, this notice was not replied by the petitioner. Another notice Annexure-'F' was given on 2-7-1987, in which, it was indicated that, under Government Resolution No.ACO/1076/1960 dated 22-10-1982 of Gujarat Building and Com. Department, the petitioner

could retain the quarter at Vadodara for a period of two months, which is wrongly typed as three months in Annexure-'F'. It was also intimated that the petitioner was to pay economic rent from 5-10-1979 to 30-6-1987 at the rate of Rs.136=00 per month. He was called upon to pay a sum of Rs.12,634=00 as economic rent from 5-10-1979 to 30-6-1987 within ten days from the receipt of notice and he was further informed that, in case the amount is not paid within ten days, the same shall be recovered from the salary bill/pension of the petitioner. This notice could have been taken as show-cause notice by the petitioner and he could have replied, why recovery of economic rent could not be made from his salary or pension. He, again remained silent. Consequently, these two notices Annexure-'E' and 'F' afforded sufficient opportunity to the petitioner to reply to the authorities, why economic rent could not be recovered from him. Since he did not do so, it can not be said that the impugned order Annexure-'A' is vitiated by non-observance of the principles of natural justice. This contention of Shri Supehia can not be accepted.

#. His next contention has been that, since the posting of the petitioner to Nadiad was temporary, he was entitled to retain the room at Vadodara. However, the petitioner has not filed the copy of transfer order, from which, it could be gathered that he was transferred to Nadiad on temporary basis. On the other hand, Annexure-'B' from the Police Inspector, Prohibition Branch, it flows that it was not the case of temporary transfer from Vadodara to Nadiad. It was not indicated that it was a case of temporary transfer. Consequently, it can not be accepted that transfer to Nadiad was temporary transfer. Moreover, the petitioner worked at Nadiad for a period of about nine years, during which period, he retained the quarter at Vadodara. As such, it can not be said to be a temporary transfer. Consequently, on this ground also, the impugned order can not be set aside.

#. The third contention of Shri Supehia has been that, the resolution dated 22-10-1982 mentioned in Annexure-'F' will operate prospectively and not retrospectively. However, in this annexure, guideline has been given that the petitioner could have retained the room at Vadodara for a period of two months from the date of his transfer, namely, from 5-10-1979. Consequently, it can not be said that this resolution has no application to the facts of the case.

#. The next contention has been that, the circular

Annexure-'G' authorizes the petitioner to retain the quarter at Vadodara, and that, it could not be got vacated from him. The learned AGP has rightly pointed out the following portion in the circular :

> "It is made clear that if any police officer/employee is transferred to and posted in branch like Investigation, Anti-corruption, Prohibition then they should be allowed to retain their quarters."

The petitioner was working in SRP and he was not posted in any branch like Investigation, Anti-corruption or Prohibition. Consequently, the authorization sought from this circular to retain the room by the petitioner can not be accepted and substantiated. Thus, this circular also could not authorize the petitioner to retain the room at Vadodara.

#. The last contention of Shri Supehia has been that the petitioner did not claim house rent allowance, which is permissible to him while posted at Nadiad, and that the house rent allowance was not granted and paid to the petitioner. As such, whatever amount is due to the petitioner towards house rent allowance may be ordered to be deducted from the total amount of recovery as economic rent. Learned AGP could not show that any amount towards house rent allowance was paid to the petitioner during the relevant period. Her contention at this belated stage that the petitioner should make a claim for house rent allowance would be exercise in futility because, this petition is pending since 1990. Admittedly, there is no prohibition in granting house rent allowance to the petitioner.

#. Consequently, the only relief which can be granted to the petitioner is that, from a sum of Rs.14,806=45 proposed to be recovered through the order Annexure-'A' dated 11-11-1990, the total amount of house rent allowance admissible to the petitioner during the period from 5-12-1979 to 1-12-1988 shall be deducted and thereafter, recovery of the balance shall be made in monthly installments to be fixed by the authority concerned. The relief for setting aside the impugned order Annexure-'A' is refused.

##. The petition, therefore, partly succeeds and is partly allowed with no order as to cost. The recovery from the petitioner shall be made in the light of the guidelines given in the foregoing portion of this judgment. The concerned authority shall calculate the amount to be recovered from the petitioner in view of the foregoing guidelines within a period of three months from

today with intimation to the petitioner.

January 18, 2001. [D.C. Srivastava, J.]
/sakkaf